

Bail Slip

The Appellant/Accused namely R.Samraj, was directed to be released on bail as per order of this Court dated 25/3/2011 made in Crl.MP.No.1/2011 in Crl.Rc.No.466/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2018

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.R.C.No.466 of 2011

R.Samraj ... Petitioner/Accused
Vs.
M.C.Loganathan ... Respondent/Compliant

Criminal Revision Case filed under Sections 397 and 401 Criminal Procedure Code to call for the records in C.A.No.33/2010 Judgement dated 09.02.2011 on the file of Additional District and Sessions Judge (Fast Track Court No.3) Viruthachalam; against judgement dated 02.03.2010 in C.C.No.12/2007 on the file of Judicial Magistrate No.I, Viruthachalam, convicting the revision petitioner under Section 138 read with 142 of the Negotiable Instrument Act and sentencing to undergo 1 year imprisonment and to pay compensation of Rs.1,10,000/- and also to pay fine of Rs.3,000/- in default to undergo 2 months simple imprisonment and to set aside the same.

For Petitioner : No appearance
For Respondent : Mr.M.R.Jothimanian

O R D E R

Aggrieved over the finding of the First Appellate Court confirming the sentence passed by the Trial Court in C.C.No.12 of 2007 imposing sentence of 1 year imprisonment and to pay compensation of Rs.1,10,000/- and also to pay fine of Rs.3,000/- in default to undergo 2 months simple imprisonment, the present revision is filed.

2.The brief facts leading to the filing of this revision is as follows:

The accused, who borrowed a sum of Rs.1,30,000/- as a loan, issued (Ex.P1) cheque dated 01.12.2006, in favour of the complainant. When the above cheque was presented for encashment, the same was dishonoured by the bank and necessary legal notice was issued, which was also received by the accused. Based on the available materials, the Trial Court found the

accused guilty under Section 138 of Negotiable Instrument Act. The Appellant Court has also confirmed it. Hence, the revision.

3.The issuance of the cheque is not disputed by the accused. The accused was examined as DW1, who has also admitted the financial transaction between the parties frequently. The only contention of the accused is that he has received only Rs.50,000/- and discharged the above amount. However, the cheque issued by him has been misused.

4.To countenance the contention that there was discharge on his part, no material is available on record except his oral evidence. When the issuance of the cheque is admitted and the cheque has been dishonoured for one of the reasons as contemplated under Section 138 of the Negotiable Instrument Act and necessary demand notice being issued, pursuant to which the complainant initiated a complaint, then it is for the accused to bring some materials to discharge the legal presumption attached to the cheque. Though the revision has been filed and pending from the year 2011, the Revision petitioner has not shown any interest to argue the matter. Even when the matter is listed today, there is no representation on the side of the revision petitioner. The learned counsel appearing for the respondent is present.

5.This Court perused the entire materials and after hearing the learned counsel for the respondent, is proposed to dispose of the revision petition itself on merits.

6.On a perusal of the entire materials, there are no circumstances what so ever found anywhere in the evidence of PW1 or in the evidence of DW1 or even in the form of any circumstances to discharge the legal presumption. Hence, this Court is of the view that the judgment of the First Appellate Court does not require any interference. However, taking into consideration the loan amount of Rs.1,30,000/-, which was borrowed for the purpose of construction of the house and also considering the adversity of the person, who borrowed the loan, this Court modifies the sentence period of imprisonment from 1 year to four months alone. The rest of the findings of the First Appellate Court remains unaltered.

abr/rka

Sd/-
Assistant Registrar(Cs V)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
(Fast Track Court No.3) Viruthachalam.

2.The Judicial Magistrate No.I,
Viruthachalam.

3.Do-Thro The Chief Judicial Magistrate,
Cuddalore.

+1cc to Mr.M.R.Jothimanian, Advocate Sr.No.17853

EV(CO)
sm:9.4.2018

CRL.R.C.NO.466 of 2011



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